



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Presentations South, Inc.

File: B-229842

Date: April 18, 1988

DIGEST

1. Contracting agencies generally must hold discussions with all responsible offerors for a negotiated procurement whose proposals are within the competitive range and, in order for these discussions to be meaningful, agencies must point out weaknesses or deficiencies in proposals unless doing so would result in technical transfusion or technical leveling.

2. Protest is sustained where agency conducted unreasonably limited discussions with protester, whose proposal was included in the competitive range, deliberately not advising the protester that its level of effort was considered too low because the contracting officer was concerned that to do so would give the protester an opportunity to rewrite its proposal.

DECISION

Presentations South, Inc. (PSI), protests the award of a contract to Creative Dimension Group, Inc. (CDGI), under request for proposals (RFP) No. RFP-NARO-7-0028, issued by the Department of the Interior, for the fabrication and installation of an exhibit for the Morgan Cultural Center. PSI contends that its proposal offered the most advantageous cost-technical value to the government. PSI further argues that the agency improperly downgraded PSI's proposal because of a low level of effort without advising PSI of this deficiency during discussions, thereby failing to conduct meaningful discussions which would have given PSI an opportunity to improve its proposal.

We sustain the protest.

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The RFP provided for award to the offeror whose technically acceptable proposal provided the government with the most advantageous price/technical relationship. The RFP stated that the technical portion of the proposal was more important than price. The technical evaluation committee evaluated the six proposals received and recommended that four of the proposals be considered technically acceptable and included in the competitive range. These four proposals were assigned technical scores ranging from 65.6 for PSI to 85.8 for Production House, Inc. (PHI). The cost proposals ranged from \$287,265 for PSI to \$572,200 for PHI.

Because of the high prices received, the agency reduced the requirement for audiovisual equipment and attendant installation costs. One of the four offerors then withdrew from the competition. Telephone negotiations were conducted with the remaining three offerors.

The contracting officer had determined that in order for PSI's proposal to be technically competitive with the other two proposals, PSI would have to significantly increase its level of effort, and that to do so would require resubmissions of the drawings required by the RFP and an increase in the overall level of effort. The contracting officer states that: "It was felt that this would be tantamount to giving PSI a 'second bite of the apple' and/or leveling a proposal that was not very inventive in the first place." Accordingly, the agency did not advise PSI that its level of effort was considered inadequate.

Instead, the agency advised PSI that its proposal required clarification of subcontractor markup figures and PSI's organizational chart, that a proposed substitute for certain plastic material was unacceptable, and that a more detailed cost proposal was required. In response, PSI provided clarifications and amended its best and final offer to address these concerns. PSI received a final technical score of 65.6 and its final cost proposal was \$235,719.75. The agency determined to award the contract to CDGI, which received a final technical score of 75.9, and submitted a final cost proposal of \$342,740. The contracting officer determined that while CDGI's final cost proposal was approximately 45 percent higher than PSI's, this was outweighed by the estimated 61 percent greater level of effort provided by CDGI, which conformed more closely to the government's expectations.

In essence, the agency determined that PSI's level of effort was inadequate. The contracting officer notes in the agency report that: "In hindsight, PSI should not have been

included in the competitive range." However, this position is without any support in the agency report, which establishes that PSI's proposal was consistently considered technically acceptable and within the competitive range.

It is well settled that for competitive range discussions to be meaningful, agencies must point out weaknesses or deficiencies in proposals unless doing so would result in disclosure of one offeror's approach to another--technical transfusion^{1/}--or would result in technical leveling when the weakness or deficiency was inherent in the proposed approach or caused by a lack of diligence, competence or inventiveness.^{2/} Advanced Technology Systems, B-221068, Mar. 17, 1986, 86-1 CPD ¶ 260.

Although agencies are not obligated to afford offerors all-encompassing discussions, Training and Management Resources, Inc., B-220965, Mar. 12, 1986, 86-1 CPD ¶ 244, or to discuss every element of a technically acceptable competitive range proposal that has received less than the maximum possible score, Bauer of America Corp. & Raymond International Builders, Inc., A Joint Venture, B-219343.3, Oct. 4, 1985, 85-2 CPD ¶ 380, they still generally must lead offerors into the areas of their proposals which require amplification. Furuno U.S.A., Inc., B-221814, *supra*; Technical Services Corp., B-216408.2, June 5, 1985, 85-1 CPD ¶ 640. In short, discussions should be as specific as practical considerations will permit in advising offerors of the deficiencies in their proposals. Tracor Marine Inc., B-207285, June 6, 1983, 83-1 CPD ¶ 604.

1/ "Technical transfusion" is the government disclosure of technical information pertaining to a proposal that results in the improvement of a competitive proposal. FAR § 15.610(d)(2) (FAC 84-16).

2/ "Technical leveling" involves helping an offeror to bring its proposal up to the level of other proposals through successive rounds of discussions, such as by pointing out inherent weaknesses in the proposal stemming from the offeror's own lack of diligence, competence or inventiveness in preparing its proposal. FAR § 15.610(d)(1); see also Austin Electronics, 54 Comp. Gen. 60 (1974), 74-2 CPD ¶ 61; E-Systems, Inc., B-191346, Mar. 20, 1979, 79-1 CPD ¶ 192.

PSI contends that the work required by the RFP is "journeyman" in nature, for which its level of effort is adequate, and that it was prejudiced by the agency's failure to apprise PSI during negotiations that Interior considered PSI's level of effort inadequate.

In the present case, we agree with PSI that Interior failed to conduct meaningful discussions. The primary basis for Interior's downgrading of PSI's proposal was PSI's inadequate level of effort. PSI proposed 3026 hours of labor compared to the 4885 hours proposed by CDGI. This was present in PSI's initial proposal and remained in its best and final offer. PSI rectified all of the weaknesses which were brought to its attention, but was not advised of this deficiency, specifically because the contracting officer did not want to provide PSI with an opportunity to substantially modify its proposal.

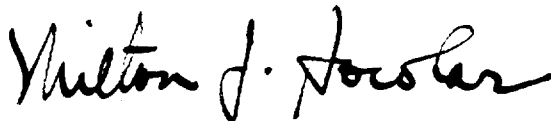
While the level of effort proposed by CDGI, in Interior's view, more closely reflected the government's expectation, such expectation was not reflected in the statement of work. We note that the third offeror in the competitive range, PHI, received the highest technical score, 858 points, based on its proposal offering a level of effort of 8159 hours. However, Production House did not receive the award because its price exceeded Interior's budget. While the three offerors in the competitive range proposed between 3026 hours and 8159 hours, these levels of effort or the fact that an offeror was offering too much or too little was never discussed with any of the offerors during negotiations. When faced with this range, discussions of the level of effort should have been held by Interior because it should have been obvious that 2 of the 3 offerors did not have the same expectation as the government thought was conveyed by the statement of work. This is what meaningful discussions could have cured.

While Interior suggests that advising of this deficiency might have constituted technical leveling, Interior provides no specific information as to why leveling would have occurred. Further, we note that technical leveling arises only where, as the result of successive rounds of discussions, the agency has helped to bring one proposal up to the level of other proposals by pointing out inherent weaknesses that remain in the proposal because of the offeror's own lack of diligence, competence, or inventiveness after having been given an opportunity to correct them. E-Systems, Inc., B-191346, note 2, supra. Here, no successive rounds of discussions were needed or conducted, and although Interior may have believed that PSI's low level of effort reflected a lack of inventiveness, we do not believe that this allowed the agency to conduct a form of negotiations which precluded

PSI from a reasonable opportunity to address this perceived deficiency in its proposal. In our view, the agency's limitation on discussions was not justified by any concern about the risk of technical leveling and prevented PSI from curing what Interior found to be a major weakness in its proposal.

Therefore, by separate letter of today, we are recommending to the Secretary of the Interior that discussions be reopened. If, as a result of negotiation, a firm other than CDGI is selected, we further recommend that the present contract with CDGI (under which performance has been suspended pending the resolution of this protest) be terminated for the convenience of the government. See Sperry Corp., B-220521, Jan. 13, 1986, 86-1 CPD ¶ 28 at 8.

The protest is sustained.

A handwritten signature in cursive script, reading "Milton J. Fowler".

Acting Comptroller General
of the United States